

OLC: 78-3567/1
27 December 1978

pls file
GAO

MEMORANDUM FOR: Deputy Legislative Counsel
FROM: Chief, Legislation Staff
SUBJECT: CIA-GAO Relations/Section 236 of the
Legislative Reorganization Act of 1970
REFERENCE: Attached Package

AT 1. [] said that you recalled discussions
with Committee staffs on the issue of how the Agency would
be affected by subject legislation. I regret to report
that we have been unable to come up with anything on point.
AT [] reviewed the legislative history of the Act
last September and determined: (1) that OLC did not maintain
a file on the Act; and (2) that there was little in the way
of illuminating language in the legislative history.
AT [] has searched additional potential sources in
response to your request with negative results. Please
note her memoranda, Section 236, and the report excerpt at
Tab A. Note also that [] of OGC, appears to have
done extensive research in the course of preparing his
memorandum on Section 236 and that he too was unsuccessful
in discovering anything in the legislative history specifically
pertaining to the Act's impact on our Agency. STA

2. With regard to the issue of whether or not Section 236
requires the CIA to submit reports to the House and Senate
Government Operations Committees (and later to the Appropriations
Committees) in response to the GAO report on Auditors' Findings,
I believe: (1) A logically defensible []
AT [] rationale can be constructed for replying in the
negative; and (2) there are also important practical reasons
for not submitting the reports mentioned in Section 236. STA

3. The following points of background information are
useful in examining the issue:

--The problem appears to have last arisen (prior
to the current case) in connection with a GAO report on the
use of discount airline fares issued on 21 July 1978. At
that time the DCI received a Memorandum from the Comptroller
General addressed to "The Heads of Federal Departments and
Agencies." This Memorandum said that the report contained
"recommendations to you," and referenced the requirements

of Section 236. The Comptroller General's letter of transmittal to the President of the Senate and the Speaker of the House noted that copies of the report were being sent to the heads of all Federal departments and agencies "because of the Government-wide application of matters and recommendations contained in [the] report." The record indicates that the question of whether or not Section 236 required us to report to the Government Operations Committees in this case was the subject of discussion between [] of OLC and [] of OGC; they apparently decided that no reports were necessary. Unfortunately, no written record of their reasoning exists, and the undersigned's conversations with [] indicate that his position on Section 236 has changed.

--In the current case (the GAO report on Auditors' Findings) the Comptroller General has addressed his 25 October letter referencing Section 236 to Admiral Turner by name and by position as Director of the CIA. The letter notes that the report has been sent because "its recommendations are addressed to each of the agencies having audit staffs," and because information included in the report was obtained "from one or more locations under your control." Mr. Staats also asks for copies of the statements which Section 236 ostensibly requires the Agency to submit to the Congress. The Comptroller General's letter of transmittal to the President of the Senate and Speaker of the House specifically mentions the names of various agencies which were asked to comment on the draft report; this did not include CIA. The letter notes that copies of the report were being sent to the heads of "other departments and agencies."

--The DDCI replied to the Comptroller General's 25 October letter on 9 November, saying that "We shall study your report carefully and take such corrective actions as we believe necessary to improve our internal audit procedures." (See Tab B; this signed copy was not in the package.)

4. I find it difficult to argue with the reasoning in [] Memorandum on the applicability of Section 236; on its face the Section does appear to apply to the Agency, and I have been unable to discover anything in the legislative history specifically to the contrary. I do not believe, however, that we should

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let our course of action be determined by a literal reading of the Act; a common sense rationale that is supported by years of precedent can be constructed as follows:

--The statutory duty of the DCI to protect intelligence sources and methods (102 (d)(3) of the National Security Act of 1947) coupled with his authority to specially certify expenditures (8(b) of the CIA Act of 1949) creates a unique limited relationship between the CIA and the GAO.

--Section 236 of the Legislative Reorganization Act of 1970, which on its face applies "Whenever the General Accounting Office has made a report which contains recommendations to the head of any Federal agency" should, as far as the CIA is concerned, be read to become operative only when the GAO has made a report to the DCI specifically concerning and containing recommendations about the Agency, and then only to the extent that the statements required by the Section can be submitted in a manner consistent with the DCI's statutory responsibilities.

--The fact that the Agency's failure to submit the reports called for by Section 236 has apparently never been cause for complaint by either the GAO or any of the four concerned Congressional committees is a persuasive indication that this interpretation was implicitly intended and has been accepted since the Act's inception.

5. Under the interpretation outlined above, we would not be required to make the statements called for by Section 236 in the Auditors' Findings case. Although the Agency provided information for the GAO's use in preparing its report, we were not asked for comments and the dollar amount of unresolved CIA audits is insignificant when compared to the Government-wide situation with which the GAO was concerned. Nor should the fact that the GAO report was sent to Admiral Turner by name be determinative. Section 236 does not, incidentally, require that copies of statements to the Government Operations or Appropriations Committees be provided to the GAO.

6. As far as the particular case now under discussion is concerned, it seems to me that the DDCI's noncommittal letter of 9 November has put the ball back in the GAO's court. It is, of course, always possible that one of the Government Operations Committees (or one of the Appropriations Committees) might raise the issue, but given the failure of the GAO transmittal letter to mention the CIA specifically this would almost certainly happen only as a result of GAO prodding. On the other hand, sudden Agency compliance with Section 236 after years of apparent silence would be sure to lead to embarrassing questions.

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7. More generally, I find the Comptroller General's mention of Section 236 in a letter addressed specifically to the DCI to be part of a disturbing trend toward greater GAO assertiveness vis-a-vis the CIA.

--The Comptroller General's insistence on the importance of securing compartmented clearances for GAO staff has always been couched in terms of the need for the GAO to audit Defense Department weapons procurement programs. It should be noted, however, that limitations on such clearances have also been a factor in restricting GAO management reviews of the Agency, i.e., evaluations of Agency programs and activities. In my view, such broad management reviews are potentially far more troubling than the strictly financial audits to which Section 8(b) of the CIA act applies.

--On 28 April 1978, during a discussion of the compartmented clearances issue, the Comptroller General told the DDCI that he (Staats) did not intend to raise the issue of GAO audits of CIA, because he recognized that the GAO lacked statutory authority in this area; Staats later testified strongly in favor of H.R. 12171, the Brooks-sponsored "Federal Accounting and Auditing Act of 1978," which would have expanded GAO authority to audit unvouchered expenditures. Lack of authority to audit confidential expenditures has, of course, been another factor in limiting the GAO's ability to conduct management or program reviews at CIA.

8. In testimony before the House Select Committee on Intelligence on 31 July 1975, Mr. Staats declared that if the GAO were given "the necessary charter" with regard to the Intelligence Community:

"Some of the areas where we believe that GAO studies might be conducive to improved management would be, for example, examinations into intelligence requirements and analysis capability. In addition, procurement, property management, and personnel management usually present opportunities for economies and improved management. Furthermore, exploration should be undertaken of the potential, within and among the agencies, for a duplication or lack of coordination of collection, analysis, and research activities." (Hearings: U.S. Intelligence Agencies and Activities: Intelligence Costs and Fiscal Procedures, p. 11.)

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9. A determination that the Agency is subject (except in extraordinary cases) to the provisions of Section 236 of the Legislative Reorganization Act of 1970 would require us to prepare statements with regard to virtually all GAO reports that recommend management adjustments within the Executive Branch. I would urge that we carefully consider trends in our relationship with the GAO and the Comptroller General's 1975 testimony before committing ourselves to such a course. As noted above, I believe we can argue that Section 236 should not apply to the Agency except in extraordinary circumstances, and then only within the limitations mandated by other applicable statutory provisions. With regard to the specific issue at hand, I would caution against any hasty precedent-setting action. -

10. Additional points to note in connection with this subject:

--I spoke to Deputy IG [] on 26 December; he is in accord with the general line of argument set out above. [] said that [] the chief of the Audit Staff, had prepared a report for submission to the Government Operations Committees if this was required, but that he [] had sent it back to [] for revisions.

- [] believes that [] is the Agency official participating in the OMB-directed program for corrective action which was launched in the wake of the GAO report on Auditors' Findings; [] will check this when [] returns from leave. (See Tab C.)

cc: []

Distribution:

Original - Addressee

1-OLC Subject

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OLC [] mlg (27 Dec 1978)

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19 SEP 1978

GAO

OLC #78-~~0397/117~~

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AT
NOTE FOR:

[Redacted]

Chief, Legislation Staff/OLC

AT
FROM:

[Redacted]

Paralegal Specialist
Legislation Staff/OLC

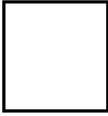
SUBJECT: Request for Clarifying Legislative Intent
of Section 236 of the Legislative Reorganization
Act of 1970 (P.L. 91-510)

A review of the legislative history of the Legislative Reorganization Act of 1970 (P.L. 91-510) has revealed there is no discussion of section 236, which requires the head of a Federal agency to submit a written statement on actions taken on recommendations by the GAO in a report to the Congress. I have also determined that this office maintained no file on this legislation.

[Redacted]

STA


26 December 1978

AT NOTE FOR: 

FROM:

SUBJECT: Legislative Reorganization and Reform Act of 1970

Per your request for legislative history and possible Journal items pertaining to subject act, I determined from the Congressional Quarterly Almanac that the House Rules and Senate Government Operations Committees considered the legislation in the 91st Congress. I reviewed the files entitled "Committees General" in the House (since there was no separate file for the House Rules Committee) and "Senate Government Operations" Committee for the 91st Congress (1969 - 1970) and could find no reference to the Legislative Reorganization and Reform Act of 1970.


Paralegal Specialist

STA

AGENCY REPORTS

31 U.S.C. 1176

SEC. 236. Whenever the General Accounting Office has made a report which contains recommendations to the head of any Federal agency, such agency shall—

^aSubsec. 235(c) as added by Public Law 92-136, approved October 11, 1971, sec. 8, 85 Stat. 376.

(1) not later than sixty days after the date of such report, submit a written statement to the Committees on Government Operations of the House of Representatives and the Senate of the action taken by such agency with respect to such recommendations; and

(2) in connection with the first request for appropriations for that agency submitted to the Congress more than sixty days after the date of such report, submit a written statement to the Committees on Appropriations of the House of Representatives and the Senate of the action taken by such agency with respect to such recommendations.

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Calendar No. 192

81ST CONGRESS
1st Session

SENATE

REPORT
No. 91-202

LEGISLATIVE REORGANIZATION ACT OF 1969

MAY 23, 1969—Ordered to be printed

Mr. MUNDT, from the Committee on Government Operations,
submitted the following

REPORT

[To accompany S. 844]

The Committee on Government Operations, to which was referred the bill (S. 844) to improve the operation of the legislative branch of the Federal Government, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

INTRODUCTION

S. 844 would be known as the Legislative Reorganization Act of 1969 and would implement most of the principal recommendations contained in the final report of the Joint Committee on the Organization of the Congress, filed in the Senate in the 89th Congress (S. Rept. 444).

With one major exception and minor revisions, S. 844 incorporates virtually all of the provisions of S. 355 which passed the Senate by a rollcall vote of 75 to 9 on March 7, 1967, following 17 days of debate, 11 rollcall votes, and the adoption of 40 amendments. It was referred to the House Committee on Rules which held a hearing on April 10, 1967, and took no further action. The major exception referred to is the omission of title V of S. 355, dealing with the regulation of lobbying; the minor revisions relate primarily to matters which have been taken care of either administratively or in other legislation, and technical and conforming amendments designed to update the earlier measure.

PURPOSE AND SUMMARY OF PRINCIPAL PROVISIONS

S. 844 is divided into four titles: "The Committee System" (title I); "Fiscal Controls" (title II); "Sources of Information" (title III);

was approved by a rollcall vote must contain a tabulation of the vote of individual members. Unless prohibited by committee rules, providing would be permitted in reporting a measure, but *only* if the absent member has been informed of the matter on which he is being recorded and has affirmatively requested that he be so recorded. Committee action in reporting a measure in compliance with this provision would constitute ratification by the committee of all previous action in respect thereto, and no point of order would lie against it on the ground of failure of compliance.

With respect to supplemental and deficiency appropriations, the joint committee stated that, although such requests are necessary when the need for funds was not known at the time of the regular session or when intervening circumstances have necessitated additional financing, such appropriations should be regarded as an exception to the emergency device, rather than a normal procedure. Implementing the joint committee's recommendation, S. 844 would require Appropriations Committee reports accompanying such bills to include a complete explanation of the nature of each request and the reason why it was not, or could not have been, included in the regular appropriation bill either for the current or the next fiscal year.

Utilization of GAO reports

The joint committee found that (1) although the past activities of the GAO are well recognized, its role in budget review and fiscal aspects of legislation has never been clearly defined; (2) GAO could be a more useful arm of the Congress in the field of expertise and accumulation of data; (3) it would be most desirable to make better use of its reports, both from the standpoint of appropriations study and general legislative review; (4) GAO representatives should be available to discuss their reports with the membership and staff of the Appropriations Committees with respect to agency justifications for the current year or the planning of areas for study for the following year; (5) meetings with legislative committees and staff on a more regular basis would be helpful to those committees in their review function; (6) the Congress should be given a full report from departments and agencies relative to action they have taken pursuant to recommendations contained in GAO reports; and (7) agency justifications for the Appropriations Committees should include a report on action taken pursuant to such reports.

It may be noted that items (1) and (2) would be dealt with by provisions of S. 844 which are discussed in preceding sections dealing with budgetary and fiscal information. The bill would implement the remaining recommendations by requiring the Comptroller General (1) to furnish the Senate and House Committees on Appropriations and Government Operations with copies of all GAO reports, and to furnish all other committees with copies of those reports dealing with matters under their respective jurisdictions; and (2) to designate GAO representatives to explain and discuss GAO reports with congressional committees, or their staffs, when so requested, in order to assist committee consideration of proposed legislation, including appropriations requests, or committee review of Federal activities or programs within their respective jurisdictions.

In order to insure that GAO reports and recommendations are brought to the attention of the Appropriations Committees and receive due consideration, the bill would require all Federal de-

ments and agencies to submit reports taken by them in response to the agency's first appropriation bill more than 60 days after the date of its passage.

Legislative committees—Cost estimates

The joint committee called attention to the fact that the appropriations process is only one portion of the budget process. The authorizing legislation provision is exercised primarily by the legislative committees, and some programs are subject to annual appropriations, and some are subject to a reduction of the level of appropriations which has not been authorized.

Pointing out that this situation places a heavy burden on the legislative committees, the joint committee stated that the legislative committees sometimes lack the resources for a reduction of the level of appropriations without consideration; and although the committees are required to furnish cost estimates on programs, they are not usually prepared and receive little assistance.

The joint committee concluded that the legislative committees should assume the responsibility of (1) the committee report should be prepared for the next year and for future years; (2) the committee report should be subject to a point of order if it is so basic to sound procedures; and (3) consideration of the bill should be subject to a point of order if it is so basic to sound procedures.

S. 844 would require legislative committees to (1) a projection of the cost of carrying out such programs for each of the next 5 fiscal years; (2) a comparison of the proposed legislation, if less than the current level of expenditures, loss in revenue for a 1-year period; and (3) a comparison of the proposed legislation with the current level of expenditures by Federal executive branch agencies. In compliance with the above, the reasons why compliance is not possible, that, in the absence of such information, legislation would not be in order.

Finally, the bill would require every effort to authorize new programs to, an annual appropriation bill, and to review all grant-in-aid programs.

TITLE III—SOURCES OF FUNDS

The joint committee found that the primary issues require Members of Congress to be able to evaluate the demands by constituents for increased in magnitude in recent years.

ments and agencies to submit to such committees a statement of action taken by them in response to the GAO's recommendations, in connection with the agency's first appropriations request submitted to the Congress more than 60 days after the date of the GAO's report.

Legislative committees—Cost estimates and annual appropriations

The joint committee called attention to the fact that the appropriations process is only one element of fiscal control, and a large portion of the budget is not subject to annual appropriations. Once the authorizing legislation has been enacted, congressional supervision is exercised primarily through general review of administration, and some programs become fixed obligations, subject only to perfunctory annual appropriations action. Others, although technically subject to appropriations review, become virtually immune to a reduction of the level of spending once the program itself has been authorized.

Pointing out that this situation indicates the important responsibilities resting with the legislative committees in the exercise of fiscal control, the joint committee stated that, unfortunately, legislative committees sometimes consider programs solely on the basis of general desirability without taking into account budgetary considerations; and although the executive branch is required by law to furnish cost estimates on proposed legislation, these reports are barely prepared and receive little consideration.

The joint committee concluded that (1) the Congress itself should assume the responsibility of estimating the cost of new legislation; (2) the committee report should include a projection of costs for the next year and for future years on programs of multiyear authorization; and (3) consideration of the fiscal consequences of new legislation is a basic to sound procedures that final consideration of a bill should be subject to a point of order in the absence of such projection.

S. 844 would require legislative committees to include in reports on new legislation (1) a projection, made by the committee, of costs to be incurred in carrying out such legislation for the then current, and for each of the next 5 fiscal years (or the authorized duration of the proposed legislation, if less than 5 years); (2) an estimate of gain or loss in revenue for a 1-year period with respect to measures affecting revenues; and (3) a comparison of such cost estimates with any made by Federal executive branch agencies. In the event of inability to comply with the above, the report would be required to state the reasons why compliance is not practicable. The bill provides further that, in the absence of such information, final consideration of such legislation would not be in order.

Finally, the bill would require all legislative committees to make every effort to authorize new programs on, and transform existing programs to, an annual approximations basis; and to periodically review all grant-in-aid programs under their respective jurisdiction.

TITLE III—SOURCES OF INFORMATION

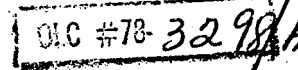
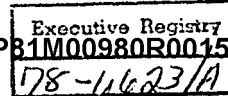
The joint committee found that (1) the complexities of contemporary issues require Members of Congress to obtain expert assistance in order to enable them to evaluate legislative proposals properly; (2) the demands by constituents for a great variety of services has increased in magnitude in recent years and is expected to continue in

The Deputy Director

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Washington, D.C. 20505



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9 NOV 1978

Honorable Elmer B. Staats
Comptroller General of the
United States
Washington, D.C. 20548

Dear Mr. Staats:

Thank you for your letter of 25 October 1978 transmitting to us the results of your Government-wide review of how Federal departments and agencies resolve auditors' findings.

We shall study your report carefully and take such corrective actions as we believe necessary to improve our internal audit procedures.

Sincerely,

/s/ Frank C. Carlucci

Frank C. Carlucci

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OLC #78-3158

MEMORANDUM FOR HEADS OF DEPARTMENTS AND AGENCIES

GAO

SUBJECT: Audit followup

The General Accounting Office has just issued a draft report on audit followup. It says that operating departments and agencies have a backlog of \$4.3 billion in unresolved audit findings, and that failure to act on these findings may be costing the Government hundreds of millions of dollars a year. The report says that

- some officials are waiving recoveries without proper authority to do so
- others delay decisions so long that recovery is precluded
- agencies lack accounting controls over recovery actions.

This situation is intolerable, and corrective action must be taken at once. I urge you to launch an immediate review of your department or agency system of audit followup. Guidance on a proper followup system may be found in our Circular A-73, "Audit of Federal Operations and Programs."

In the meantime, I have asked my staff to meet with yours, and with the GAO, to discuss the details of the GAO findings, and their recommendations for corrective action. I would appreciate your naming someone within the next week to serve as your representative in this matter. please provide us the name, address, and phone number of your representative so that we may begin scheduling the meetings.

James T. McIntyre, Jr.
James T. McIntyre, Jr.
Director